

October 24, 2012

Dear Ms. Haveman,

It may be of interest to you to review this video on the website for the Marquette City Commission, taken during a regular meeting on September 18, 2012: <http://mqtcty-mi.pegcentral.com/player.php?video=9460a8dd910ebb1dffd435c100642cc>

Carl Lindquist, Executive Director for the Superior Watershed Partnership, is at the podium, discussing the Partnership's recently adopted agreement to work with Rio Tinto to monitor environmental impacts of their Eagle Mine operations (this agreement is somewhat controversial).

The City's expressed concern, here, is with the adverse effects of running ore trucks through Marquette. When Carl is asked about this type of monitoring, he somewhat surprisingly replies that "they" (Rio Tinto) say that truck traffic coming through the City during the mine construction phase is heavier than what it will be during production! I do not doubt the truth of that statement; I'm only a bit surprised that they would admit it. His comment affirms what many have already suspected, that there is no real projected increase in average daily traffic due to ore hauling from the Eagle site. We have already experienced the peak.

Another conversation that has been kept quiet is discussion of a bypass north of the City. In a comment letter submitted to the EPA just prior to the September 4, 2012 deadline, Powell Township Supervisor Daryl Wilcox says that the Forestville bypass (or "fly-ash route") would prevent mining trucks from coming through the City and would provide a route for the heavy logging traffic coming from Big Bay, the limestone trucks that currently use Wright Street, and for the trucks going to the new NMU power plant on the corner of Wright Street and Sugarloaf Avenue. "All the delivery trucks that go to WE Energies," his letter states, "could use that route also."

In an October 1, 2012 e-mail, Marquette Township Supervisor Randy Girard replies, when asked about the Forestville route:

*I surmise that the "pink" route referred to is from our Road Facility Plan as developed by the Planning Commission and adopted by the Board as part of the Townships most recent 25 year Master Plan. That is a proposed concept for a future route for commercial traffic to avoid the congested area of the highway corridor through the Township – it pre-dates any Township knowledge or discussion of the Wilderness Road or CR595.*

When I asked Daryl where he got his information about the bypass being considered by Kennecott, he replied:

*On a non official conversation I talked with one of the engineers that worked on the Forestville survey for KEMC. I also talked to the Supervisor of Marquette Township after one of the 595 advisory Council meetings and he stated that KEMC had been in contact with them on the Forestville Route if 595 was not approved.*

*I asked officially at some of the Advisory Council meetings about this route and it was very clear that no one was going to commit or acknowledge that any work had been done on this route. Publicly not one person spoke of it...the information you seek is being very closely guarded by MCRC and KEMC.*

During the City Commission meeting on September 18, Carl Lindquist off-handedly asks if “the fly ash route” is a possibility and Mayor Kivela replies, “I don't know if it is or not. That's one they're looking at,” and “We've been firm supporters of 595 and we're going to keep pushing that route.”

So, the Mayor admits, at least in this context, that Rio Tinto is looking into using a bypass and that the City is not budging in their support of CR 595. Some explanation might be found for their obstinacy by reading through City Manager Bill Vajda's February 2012 report entitled, “Getting it Right, Getting it Done in the Upper Peninsula,” which includes a discussion of “Woodland Road” as a way to expedite mineral extraction.

The City of Marquette's “Speaking Points on Woodland Road CR 595,” also written by Bill Vajda, says that the City will receive no direct benefits from construction of 595. But in “Getting it Right,” the City Manager is using alleged economic benefits as justification for building CR 595.

The “Speaking Points” letter also says that “the full brunt of costs associated with any alternative route through the City would fall solely on the City of Marquette—without any corresponding benefits.” In fact, the City would benefit from a reduction in heavy truck traffic and it is likely that both public and private funds could be secured for a bypass.

Notes obtained through an Open Records request show numerous sources of public funding that might be available for upgrading Kennecott's current haul route, which includes portions of the Triple A Road, 510 and 550. MEDC block grants, Category A grants, and EDA funds are among those mentioned.

Additionally, in a January 17, 2011 press release, Rio Tinto promised to cover the costs:

*Kennecott is committed to working with residents and to paying for necessary upgrades and significant safety and structural improvements to the Triple A, County Roads 510 and 550, Wright Street, and other transportation infrastructure.*

As for the timeline he suggests for construction of a bypass, Vajda neglects to mention that Marquette Township and Rio Tinto have already done preliminary work and that this route has been under consideration since at least 2008. He also seems to “forget” that CR 595 is likely to end up being a financial liability. With fewer and fewer funds available from Lansing, upkeep of this road, including plowing, mowing, patching and police patrols, would leave the county with essentially another unfunded mandate.

The City's concerns about the future environmental effects of increased traffic due to Kennecott hauling ore through Marquette are essentially moot, in light of Carl Lindquist's comment that Rio Tinto said there is more traffic now, during construction, than there will be during operations at the mine. It seems inappropriate, also, to simply divert those concerns, as they have done, to a more remote area of the County, where impacts to water and wildlife will be much more severe.

The section on Environmental Justice is just as absurd. If Rio Tinto uses the Sugarloaf-Wright Street route, their trucks will not disproportionately affect low-income housing on the north side of Marquette, but will, instead, go through mixed use areas that include residential, business, and institutional properties.

Mr. Vajda is also mistaken in stating that CR 595 would follow existing roads and trails. In fact, only 3.7 miles, out of approximately 21.4, are within 50 feet of existing county roads and 13 are not within 50 feet of any existing trail (USFWS letter re CR 595).

One might ask whose interests our city manager is serving, here.

Many of the comments submitted regarding CR 595 questioned the validity of the stated project purpose, the basis for and the starting point of the review process.

The Army Corp's 595 letter to Peter Swenson, dated March 29, 2012, said, "We do not support the project purpose as currently stated." The letter also says the proposed route is the most direct link between Kennecott's mine and mill, and that Kennecott would be the primary funder and beneficiary of this project.

Regulations forbid an applicant from so narrowly defining the project purpose so as to preclude any alternative but that preferred by the applicant. Yet that is exactly what the Road Commission and Kennecott have done. If there were any doubt, one need only compare the map of the Woodland Road route with that of CR 595. The project purpose has been worded specifically to match that route.

EPA's own comments on CR 595, dated April 23, 2012, state that the project purpose is too narrowly defined:

*Qualifiers placed within the AAPA included the stipulations that the road be within a four-mile corridor and that it be west of the Silver Lake Basin to provide access in the event of a "catastrophic flood event, such as occurred in 2003." (AAPA, p.11). These restrictions unnecessarily eliminate alternatives which meet the stated project purpose, and may not be used to limit the range of practicable alternatives considered.*

Part 303 guidance for evaluation of feasible and prudent alternatives, signed by Water Resources Division Chief William Creal on August 25, 2011, says, "It is not acceptable to define the project purpose in a manner that limits the project to the applicant's preferred location..." Yet this is exactly what the applicant has done, using weak arguments about the possibility of dam failure and other fabricated threats and benefits. And when pressed by the DEQ to reconsider the Red Road-Sleepy Hollow alternative, the Road Commission simply says it isn't an option because Kennecott won't pay for it!

The Army Corps states that CR 595, as was the Woodland Road, is primarily a haul road for Kennecott and that the project purpose should reflect that. It follows, then, their letter says, that there is no reason why County Roads 510 and 550 should be eliminated from consideration as the most feasible and prudent alternative. They do not accept the stated project purpose at face value. Thus, the entire house of cards should fall.

If the agencies evaluating the permit application are not required to determine whether or not there is a true need for the road, do they not at least have a legal and mandated responsibility to reject an application that contains a misleading project purpose and intentional misrepresentations of fact?

Even if EPA were to take the Road Commission's (and Kennecott's) stated project purpose at face value, they could still deny the permit solely on the basis of unacceptable harm. They are under no obligation to prevent the project from being scrapped.

DNR field staff assigned to evaluate the 595 application describe numerous and egregious probable impacts to the natural environment should this road be permitted, arriving at the following conclusion in their March 6, 2012 letter to Steve Casey:

*Due to the potential long lasting ecological damage associated with the proposed road system, and the potential adverse impacts to wildlife species, in particular moose, the Michigan Department of Natural Resources Wildlife division recommends existing infrastructure be upgraded and new road construction be minimized.*

How is it, then, that a May 4, 2012 letter signed by Deputy Director Moritz concludes that DNR believes that many or most of these impacts can be minimized and/or mitigated, and in an August 27, 2012 letter, recently appointed DNR Director Keith Creagh urges approval of this project? Their actions suggest that DNR supervisors are not following the recommendations of field staff, but are making decisions based on political pressure.

DEQ Director Dan Wyant is quoted in the October 16, 2012 Mining Journal, asking EPA to remove its objections, for the following reason: *"The (Gov. Rick) Snyder Administration supports this road," Wyant said.* It does not seem either appropriate or lawful for the governor of Michigan to be making decisions on whether or not federally delegated environmental regulations are being correctly implemented or should be bypassed. Is Wyant saying that what Snyder wants, Snyder should get?

It's interesting that the Road Commission meeting on the evening of October 15 included no discussion, not even a mention, of Dan Wyant's "visit" to the U.P. that same day. I caught the story on the tv6 news site, where Wyant is quoted as saying, "Environmental stewardship is our top priority at the DEQ, and my concern is, if we don't get a road built under these conditions, we'll never be able to build a road in western Marquette County." That's okay, we don't need this road.

He also said, on another occasion, that the DEQ wants to excel at customer service and be full partners in Michigan's economic recovery. When Michigan's wetlands permitting authority was challenged about 15 years ago, one of the problems cited was that DEQ and DNR senior officials were ignoring professional decisions of its own field staff. It's all too obvious that this is taking place within the permitting process for County Road 595.

During the October 15 meeting of the Marquette County Road Commission, Engineer-Manager Jim Iwanicki said the board has allowed staff to get an RFP to contractors for either building 595 or upgrading the existing road system. This suggests that the no-build alternative could be considered "feasible and prudent," and that using existing roads works for all concerned.

As for making a public interest determination, it seems to me that the public would be better served by taking Kennecott up on their original offer to fund upgrades to existing roadways which are heavily used and that will continue to be used. It does not make sense to build another road that would be expensive to maintain, especially one that is in a remote area and dead-ends on the Triple A Road.

I believe that EPA has the responsibility to make an apolitical decision on this project, and as Mr. Swenson said during the EPA hearing, decide whether the facts as determined by EPA are accurate. I contend that the "facts," as presented to EPA, are not accurate. They are based on a fraudulent project purpose and the nebulous and misleading arguments that claim to support this purpose.

The original recommendation of DNR field staff should stand: Use existing roads.

Thank you for your careful attention to this matter.

Sincerely,

Catherine Parker

Marquette, MI